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EVOLUTIONARY CLAIMS.

SPEECH

OF

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HON. R. E. FENTON,

OF NEW YORK,

In support of his Bill reported by Mr. Cragin, without amendment, from
the Committee on Revolutionary Claims, for the Final Settlement
of the Claims of the Officers and Soldiers of the Revo-
lutionary Army, and the Widows and Chil-
dren of those who died in the Service.

IN THE HOUSE OF REPRESENTATIVES,

25-10
JUNE 11, 1858.



WASHINGTON, D. C.
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SPEECH OF MR. FENTON.

After moving to suspend the rules to enable him to take up the bill to provide for the final settlement of the claims of the officers and soldiers of the Revolutionary army—

Mr. FENTON said :

MR. SPEAKER: Early in the present session, I referred this bill to the Committee on Revolutionary Claims; and the committee, after a careful examination of its provisions, with entire unanimity reported it back, and it was placed on the calendar of the House. I had expected to reach it in the regular order; but as that is now impossible, I have adopted this, the only method of getting it before the House for consideration this session; and while I make an appeal to the friends of the bill, the friends of the heroes of our Revolutionary struggle, the friends of equity and justice, to aid in suspending the rules, I beg the indulgence of the House to briefly assign my reasons in favor of the passage of the bill.

It differs from that of the late distinguished Senator from South Carolina, Judge Evans, which passed both Houses of Congress at different sessions, in this: it allowed the half pay promised by Congress, from the close of the Revolution to 1826, and deducts the commutation certificates for five years' full pay, which the officers received, (although worth at the time one-eighth only of their apparent value,) but does not deduct the pensions allowed the survivors by the act of May 15, 1828; nor does it make any provision for the *soldiers*; whereas my bill allows the half pay from the close of the war to the date of

the officer's death, and deducts all the Government ever paid, by way of commutation, or as pensions, under the act of 1828. It also grants a quarter section of land to the surviving children of the soldiers—in other words, extends to them the benefits of the act of March 3, 1855, from which they are excluded by the word "minor," there being no minor heirs of the Revolutionary soldiers.

The committee, in their able report, have sustained the principles of this bill in a masterly and conclusive manner; and I cannot so successfully, by any argument of my own, make plain to the House and the country the great injustice of our refusal to pass this bill, as by including a portion of it in my remarks.

The committee say :

"That, since the Revolution, the claims of the officers of the Continental army for the half pay for life, promised them by various resolutions of the Continental Congress, have frequently been before the committees of this House, and received their favorable consideration. At the last Congress, a report was made from the Committee on Revolutionary Pensions, by Mr. Broom, (see House Report No. 31, first session Thirty-fourth Congress,) in which the subject is so fully considered, that the committee deem it unnecessary to enlarge upon the views therein expressed, but adopt it as a part of their report, to be printed therewith.

"From an examination of that report, and various other documents relating to the subject, your committee have arrived at the following conclusions :

"1. That the resolves of October 21, 1780, and other acts of Congress, promising half pay for life to the officers of the Continental army who should serve to the end of the war, or until the time of their reduction, formed a contract be-

tween the United States and the officers of the army, in their individual capacity, at a time when both were free to make it, founded upon a good and valid consideration.

"2. That the officers fully performed and fulfilled the contract on their part, and by their services, sacrifices, and sufferings, gained the liberty and independence of the country.

"3. That on the performance of said contract, each officer, as an individual, acquired a *vested right of property therein*, of which he could not be divested '*without due process of law*,' or by his own free and voluntary relinquishment; and any act of Congress impairing or affecting this right is repugnant to the Constitution, and void. Under this contract, each officer became entitled from the United States to half pay, according to the rank he held in the army, from the close of the Revolutionary war, or from the time of his discharge from the service, until the period of his death, to be paid yearly and every year during that period; and for the performance of such contract on the part of the United States, *the faith of the nation was solemnly pledged*. The committee also find that such officers were also entitled to an interest of six per cent. per annum on the yearly payments, and on the aggregate from the date of the officer's death to the time of settlement, under the resolution of Congress passed June 3, 1784, which provides 'that an interest of six per cent. shall be allowed to all the creditors of the United States for supplies furnished or *services done*, from the time that payment became due.' In alluding to this resolve, Chief Justice Gilchrist, of the Court of Claims, in a recent decision, says: 'No language could be more express or free from doubt than this. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half pay became due, and it was a voluntary contract on the part of the United States, constituting a legal claim against them, which no subsequent legislation could release without the consent of the other party.' The above contract for half pay, although made under the Confederation, is equally binding upon Congress; for by the sixth article of the Constitution of the United States, section one, 'all *debts contracted or engagements entered into* before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.'

"4. That on the 22d of March, 1783, an attempt to avoid the above contract and procure satisfaction thereof was made by Congress, under an act called the commutation act, by which it was proposed to commute the above life annuities for five years' full pay.

"5. This act was manifestly unjust, in compelling individuals to abide by the decisions of the *lines* of the army, and placing the old and the young on an equal footing. An officer sixty years of age might well commute his life annuity for ten years' half pay in advance, while one of thirty would have a right, upon the principles which govern life annuities, to estimate his life at a much longer period. It wholly deprived the officers, as *individuals*, of the right to determine

whether they would accept or refuse; and the committee have not been able to ascertain that the officers, either by lines or as individuals, ever gave their assent to the commutation. But if, under the pressure of their poverty, (for be it remembered, the Continental money in which their monthly stipends had been paid was nearly valueless,) they had assented, 'it cannot be considered as a voluntary assent, but rather a submission to an uncontrollable and instant necessity, which admitted of no deliberation or delay.' The resolve of Congress, an act of the Government, left them no choice except to abide by the decision of the *lines* and corps of the army. They were entirely within the power of the Government, and could do nothing which presented better prospects for themselves.

"6. The *money* was not paid, nor were the *securities*, bearing an interest of six per cent, such as the act contemplated, or as the officers expected. The Government made no provision for the payment of either principal or interest of the commutation until long after the imperious necessities of the officers compelled them to part with the certificates for less than a year's pay. It is true, however, that paper certificates of service were issued by John Pierce, paymaster, payable to the officers or bearer, for five years' full pay, and many doubtless received them. They were worth, at the time of their issue, one-eighth of a dollar only; and not until after a period of about ten years, and most of them were in the hands of speculators, were they funded and paid by the United States. The loss of interest alone on the commutation of a captain, (\$2,400,) who lived in 1828, was \$2,536, and so in proportion to other officers; and this amount the Government saved by the commutation.—See *Annals of Congress*, vol. 4, part 1, for 1827-'28, page 441.

"The commutation, then, is clearly liable to the following objections:—

"1. That the commutation was not a valid accord and satisfaction for the half pay for life.

"2. That it was so construed as to take away the rights of these officers under the resolve of October, 1780.

"3. Of not being an equivalent for the half pay.

"4. Of having been effected under circumstances, and by the operation of motives, which deprive it of all obligatory force.

"5. That, according to strict legal construction, these officers did not commute their promised half pay for life by accepting the so-called commutation certificates; they in no respect having been in conformity to the act.

"6. Of partial execution.

"7. The reports of Mr. Madison, in 1783; Mr. Nelson, in 1810; Mr. Johnson, in 1818; Mr. Sergeant, December 10, 1819; Mr. Hemphill, January 3, 1826; Mr. Burgess, May 8, 1826, and February 11, 1828; the act of May 15, 1828; Senator Walker's report in 1852; Senator Evans's, February 4, 1854; and Mr. Broom, April 4, 1856—show a repeated recognition of the contract on the part of Congress; *but* no general provision appears to have been made by Congress for the relief of

these officers until the act of May 15, 1828, in which the contract of 1780 is fully recognised. They are there acknowledged as *creditors* of the Government, and not pensioners. That act, however, applies to the few surviving officers only, and made no provision for those who died before its passage.

"In the very able report of Mr. Burgess, made February 11, 1828, the committee say: 'That, in their opinion, the delivery of those certificates, as well on general principles as on those which govern courts of law and equity, did not annul the right of half pay, or exonerate the Government from the obligations of the original contract. Such of those officers as had survived the war, and continued in the service until peace, became severally and individually vested with a complete right to the reward of half pay for the residue of their lives. The reward was gallantly won at the point of the sword; it was the price of our independence, purchased with blood, and secured by *public faith*.'

"The committee, therefore, report the bill referred to them without amendment, and recommend its passage. It allows half pay for life to the officers from the close of the Revolution to the date of their death, deducting therefrom all sums which have ever been paid to them by the Government, by way of commutation or as *pay*, under the act of May 15, 1828. For the purpose of extending to the surviving children of the *soldiers* of the Revolution the benefits of the act of March 3, 1855, a section has been inserted for that purpose. The act referred to was doubtless intended to embrace their claims, but the word 'minor' excludes them, as there are no 'minor children' of the Revolution; and hence the necessity of further legislation in behalf of these meritorious claimants. The committee will add, that bills embracing the principle contained in the bill herewith reported, so far as relates to the officers and their descendants, have passed the Senate and House of Representatives by large majorities, at different sessions of Congress."

Strange to say, nearly fifty years ago a bill similar, but much more liberal in its provisions, to the bill now before the House, was reported at a time when all business of the country was depressed, and the Treasury was empty, for this half pay; and all the committees to whom these claims have been referred since that time have all united in the admission that these claims for half pay were justly due. How could they do otherwise? History finds that after the war had continued some fifteen months by enlistments for short terms, Congress resolved to raise eighty-eight battalions to serve for the war; and on the 16th September, 1776,

"Resolved, That, in addition to a money bounty of twenty dollars to each non-commissioned offi-

cer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the *representatives* of such officers and soldiers as shall be *slain* by the enemy. Such lands to be provided by the United States; and whatever expense shall be necessary to procure such land, the said expense shall be paid and borne by the States, in the same proportion as the other expenses of the war, namely: to a colonel, five hundred acres; to a lieutenant colonel, four hundred and fifty acres; to a major, four hundred acres; to a captain, three hundred acres; to a lieutenant, two hundred acres; to an ensign, one hundred and fifty acres; each non-commissioned officer and soldier, one hundred acres."

And Congress afterward was obliged to add the resolve of May 15, 1778:

"Resolved, *unanimously*, That all military officers commissioned by Congress, who are now or hereafter may be in the service of the United States, and shall continue therein during the war, and not hold any office of profit under those States, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one-half of the present pay of such officers: *Provided*, That no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than one-half part of the pay of a colonel of such corps, respectively."

It should not be forgotten that during this time the Government was in good credit, and the war was being carried on with loan office bills and certificates; and there *had issued up to November 29, 1779, two hundred million of dollars*, and a very large amount of other classes of Government securities; that the Government soon after became utterly insolvent, and all the schemes of the Government to carry on the war by the aid of loan offices *utterly failed*; and as early as March 18, 1780, Congress was obliged to relinquish the hope of redeeming the Government paper, (much of it then being in the hands of the officers,) and on the 18th of April, 1780, passed a resolution—

"That the principal of all certificates taken out since the 18th of March, 1780, should be discharged at the rate of one Spanish milled dollar, or the current exchange thereof, in other money at the time of payment, for forty dollars of the said bills of credit secured on loan; and that the principal of all certificates that should *thereafter be taken out*, until the further order of Congress, be *discharged* at the same rate and in the same manner as those that had been taken out since the 18th of March, 1780."

Here, then, was the *public declaration* of the *utter insolvency* of the Government, as early as the 18th of March, 1780.

Thus, while the *State troops* were being paid by State authorities, the Provincial Government had neither money nor credit to carry on the war. These important facts should be kept in view; for it will be seen that after the war had continued over five years, that, in consequence of the utter insolvency of the Government, two distinct classes of *currency* were established by *law*. That the paper of the Government had *ceased* to be considered as *security*, and therefore the seven years' half pay contract of October 3, 1780, promised the supernumerary officers, was made payable in *specie*. That on the 3d of October, 1780, Congress reorganized the army, to take effect on the 1st of January, 1781, the effect of which was to throw many of the officers out of service. They therefore, at the same time, adopted the following resolution:

"And whereas, by the foregoing arrangement, many deserving officers must become *supernumerary*, and it is proper that regard be had to them:

"*Resolved*, That from the time the reform of the army takes place, they be entitled to half pay for seven years, in *specie*, or other current money equivalent, and *also grants of land* at the close of the war, agreeably to the resolution of the 16th of September, 1776."

It will be observed, by the letter of General Washington, that it became necessary, inasmuch as there was no funds in the Treasury, to offer some strong inducement by pledging the *honor* of the nation for some *prospective* reward, and all were embraced in the resolve of October 21, 1780.

It was at this critical time of the eight years' struggle for liberty, when the hopes of those who had borne its burdens seemed about to terminate in disappointment and despair, that Congress, on the 21st day of October, 1780, after the *repeated* and *earnest* solicitations of Washington,

"*Resolved*, That the Commander-in-chief and commanding officer in the Southern department direct the officers of each State to meet and agree upon the officers for the regiments to be

raised by their respective States, from those who incline to continue in service; and where it cannot be done by agreement, to be determined by seniority, and make return of those who are to remain; which is to be transmitted to Congress, together with the names of the *officers reduced*, who are to be allowed *half pay for life*. That the officers who shall continue in the service to the end of the war shall be entitled to *half pay during life*, to commence from the time of their reduction."

This resolution having embraced those officers named in that of October 3, 1780, it was simply supplementary, additional to, and blending of that contract, and was therefore payable in *specie*. It could not have been viewed otherwise, because the act of the 18th of March and April, and 28th June, 1780, fixing the value of all Government paper to two and a half dollars to the hundred, was in full force, and so continued, during the whole period of the old Confederacy. Here, then, it is admitted that this was a solemn contract, by which these officers were promised half of their annual pay during their lives; that this *life estate* was, as the committees have always found, a *vested right*, and could not be impaired by any subsequent legislation; that it was a promise to each officer individually. Was this half-pay contract for life ever paid, in *specie* or otherwise, during the period of the old Confederacy? All agree that no *portion* of principal or interest was ever paid during that time nor since as *half pay*.

But it is sometimes contended that the computation act, as it is sometimes called, of March 22, 1783, was passed at the request of some of the officers. *Because*, as it is alleged in the preamble of the resolution itself, "*in order to remove all subject of dissatisfaction from the minds of their fellow-citizens*," (not the officers, let it be remembered:)

"And whereas Congress are desirous as well of gratifying the reasonable expectations of the officers of the army, as removing all objections which may exist in any part of the *United States* to the principle of the half-pay establishment, for which the faith of the *United States* hath been pledged; persuaded that those objections can only arise from the nature of the compensation, not from any indisposition to compensate those whose services, sacrifices, and sufferings, have so just a title to the approbation and rewards of their country: Therefore,

"Resolved, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half pay promised for life by the resolution of the 21st day of October, 1780; the said securities to be such as shall be given to other creditors of the United States: *Provided*, it be at the option of the lines of the respective States, and not of officers, individually, in those lines, to accept or refuse the same: *And provided*, also, That their election shall be signified to Congress, through the Commander-in-chief, from the lines under his immediate command, within two months, and through the commanding officer of the Southern army, from those under his command, within six months from the date of this resolution."

This act does not repeal that of the 21st October, 1780, and there are many objections to this resolve, which should be conclusive why it ought not to have any influence over the half-pay contract.

1. Because it appears by the preamble that *the few* officers who petitioned Congress for some act which should give them a sum in gross for a term of years, did so for the only reason to remove "*dissatisfaction from the minds of their fellow-citizens*" to the "*half-pay establishment*."

2. Because, by the terms of the act *itself*, the officers were expressly *prohibited* from expressing their dissent to the same.

3. Because this resolve was not passed until after the peace, after the contract had been fulfilled on the part of the officers.

4. Because it was well known to Congress, at the time of the passage of that act, the Government had no power to comply with any of the conditions of that act, either to pay said officers in *specie* or give them *security*. The sending out those commutation certificates, and inducing the officers to believe that they were to be secured and brought within the terms even of this resolve, was utterly at variance and inconsistent with, and in violation of, the *pledged faith* of the American people; and the officers should not be held to account for only their *legal value*, two dollars and a half to the hundred; this was its true

value *by law* during all the period of the old Confederacy, for some three years *afterwards*; and it was merely a certificate of a captain's rank for only *sixty* dollars instead of twenty-four hundred dollars. And this was the relation of the officers who held a *specie*-paying contract through all the old and during the new Confederacy up to the 4th of August, 1790. Even at this late day, *after* these certificates had been passed from hand to hand at their legal value of two dollars and fifty cents to the hundred, and while out of the hands of the officers, they are funded on the *specie* basis of one dollar to the hundred.

But in order to remove all doubts in relation to the final disposition of these certificates, even by those *who held them*, and to show that there was *deducted*, and never paid to *any person* whatever, in the ratio of a captain's grade, which amounted, on the 1st day of January, 1828, to the sum of \$2,536.32, the *second* section of the funding act of August 4, 1790, authorizes the President to cause \$12,000,000 to be borrowed, *part* to pay arrears and instalments of the *foreign debt*, and to make other contracts relating to the *foreign debt*. The act then proceeds in relation to the *domestic debt* thus:

"And whereas it is desirable to adapt the nature of the provision to be made for the *domestic debt* to the *present circumstances* of the United States, as far as it shall be found practicable, consistently with good faith and the rights of the creditors, which can only be done by a *voluntary loan* on their part."

The *third* section then authorizes a loan to be proposed to the full amount of the "*domestic debt*," by opening books for receiving subscriptions, by a commissioner of loans, to be appointed in each of the States; and that the sums which shall be subscribed thereto be payable in "*certificates*," issued for the said debt according to their *specie value*; which said certificates are designated and described as follows:

"1. The '*certificates*' issued by the Register of the Treasury.

"2. Those issued by the commissioners of loans in the several States, including '*certifi-*

cates' given pursuant to the act of Congress of the 2d January, 1779, for bills of credit of the several emissions of the 20th of May, 1777, and of the 11th April, 1778.

"3. Those issued by the commissioners for the adjustment of the accounts of the quartermaster, commissary, hospital, clothing, and marine departments.

"4. Those issued by the commissioners for the adjustment of the accounts of the respective States.

"5. Those issued by the late and present Postmaster General, or commissioner of army accounts.

"6. Those issued for the payment of interest, commonly called indents of interest.

"7. And the 'bills of credit' issued by the authority of the United States, in Congress assembled, at the rate of \$100 in the said bills for one dollar in specie."

The fourth section designates and describes the *three new certificates* which the subscribers to the said loans shall be entitled to receive; upon all certificates bearing interest, the same is to be received up to the last day of December, 1790.

"That for the whole or any part of any sum subscribed to the said loan, by any person or persons, or body politic, which shall be paid in the principal of the said domestic debt, the subscriber or subscribers shall be entitled to a certificate purporting that the United States owe to the holder or holders thereof, his, her, or their assigns, a sum to be expressed therein, equal to two-thirds of the sum so paid, bearing an interest of six per centum, payable quarter yearly, and subject to redemption by payments, not exceeding in one year in amount of principal and interest the proportion of eight dollars upon a hundred of the sum mentioned in said certificate. A second certificate for one-third, payable as aforesaid, bearing interest after 1800. A third certificate, for the amount of the interest, bearing an interest at three per centum per annum, payable quarter yearly; provided it shall not be understood that the United States shall be bound or obliged to redeem in the proportion aforesaid; but it shall be understood only that they have a right to do so."

Thus the facts find that none of the terms or conditions of the resolve of March 22, 1783, were complied with by the old or the new Government, but repudiated. This five years' full pay, by the terms of the resolve, was to have been paid in *specie* or *securities*. This first contract for half pay being payable in *specie*, it would have been exchanging *specie* for the depreciated paper of the Government, worth by law only two and a half dollars to the hundred. Such

an act might *conditionally* have been considered *supplementary* to that of October 21; but that having utterly failed in its execution, it is not important to show whether the officers, relying upon the *good faith* of the Government at that time, accepted said certificates or not. It is certainly true, that if they had been *either specie or security*, it would not have been necessary for the holders to have *funded* them at a loss of over thirty per cent. even on a term of time requiring about forty years for their liquidation. And not only so, this Government, it will be seen, by the funding act reserved the right of *paying even that amount or not*. But after these facts have been found, some may not agree to the construction of the funding act. I therefore submit the remarks of Mr. Tucker, of New Jersey, while the same contract was being discussed, in passing the act of May 15, 1828. Referring to the records of the Register's office:

"Mr. TUCKER, of New Jersey. It is ascertained, Mr. Chairman, that each captain, for his five years' full pay, received a certificate for \$2,400, bearing interest at six per cent., payable annually, and such a certificate Captain Dehart received in lieu of his half pay for life, which ran eight years without payment of interest, as before stated, namely, from the 1st of January, 1783, to the 1st of January, 1791, the interest amounting on the latter day to \$1,152; making in the aggregate \$3,552. It will be recollected that in March, 1788, the present Government went into operation, and in the year 1790 made provision for and funded the public debt.

"Well, sir, how did they provide for the payment of Captain Dehart's \$2,400 principal, and \$1,152 interest, due on the 1st of January, 1791? Why, sir, they gave him three certificates—one for \$1,600, being two-thirds his principal, with interest at six per cent., and one for \$800, the other third of his debt, but deferred ten years without interest; and, instead of paying his \$1,152 down, or giving him paper at six per cent., they gave him a certificate for his \$1,152 interest, redeemable at the pleasure of the United States, at three per cent. Let us now examine how this funding system operated:

1. Loss of interest on \$800, deferred from 1st of January, 1791, to 1st of January, 1801, (ten years,) at six per cent. \$480.00
2. Interest on the above sum from the 1st January, 1801, to the 1st January, 1828, (twenty-seven years,) at six per cent. 777.60
3. Loss of interest on the \$1,152 of the three per cent. from 1st January,

1828, (thirty-seven years,) at three per cent.....	1,278.72
Total loss of Captain Dehart, down to this time.....	2,536.32

"And, in the same proportion, every officer's pay or commutation, according to his rank.

"The commutation, then, is clearly liable to the following objections:

"1. That the commutation was not a valid accord and satisfaction for half pay for life.

"2: That it was so construed as to take away the rights of these officers, under the resolve of October, 1780.

"3. Of not being an equivalent for the half pay.

"4. Of having been effected under circumstances, and by the operation of motives, which deprive it of all obligatory force.

"5. That, according to strict legal construction, these officers did not commute their promised half pay for life by accepting the so-called commutation certificates; they in no respect having been in conformity to the act.

"6. Of partial and defective execution."

In that great national act of *necessity*—that of *funding all the paper* of the Government—Congress did not omit to make some provision for these *half-pay claims*. Accordingly, the ninth section of the funding act provides:

"That nothing in this act contained shall be construed in any wise to alter, abridge, or impair the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the contracts and rights shall remain in full force and virtue."

Not only so: in order to make creditors some compensation for the inevitable delay of payment, which the impoverished Treasury could not fail to predict, on the 3d of June, 1784, Congress passed the following resolution:

"That an interest of six per cent. *per annum* shall be allowed to all creditors of the United States, for supplies furnished, or services done, from the time the payment became due."

This extended to all their *arrears of pay* long due, as well as to their half pay. Chief Justice Gilchrist, in a recent decision, in alluding to this resolve, says:

"No language could be more express or free from doubt than this. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half pay became due; and it was a voluntary contract on the part of the United States, constituting a legal claim against them, which no subsequent legislation could release without the consent of the other party." * * * "It

may be added, that, up to the year 1837, there was paid interest on fifteen hundred and ten claims of widows and orphans, and claims of officers for personal services, the statute of limitation as to such claims having been suspended."

The omission, therefore, to pay the *interest due annually* on those certificates, was a violation of the resolve of 1783, as well as the condition of the certificates.

The sixth article of the Constitution provides—

"That all *debts* contracted and *engagements* entered into before the adoption of this Constitution shall be as valid against the United States, under *this* Constitution, as under the Confederation."

The act of 1783 admits the half-pay claim to be such a *debt* or *engagement*.

"This *Constitution*, and the *laws* of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law* of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

In order, if possible, to render the public faith more *secure*, more *sacred*, the third section of the Constitution provides that—

"The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by an oath or affirmation to *support* this Constitution."

The resolve of 1783 declares—

"That the *faith* of the *United States* hath been pledged to those officers whose *services* and *sufferings* have so just a title to the appropriation and rewards of their country."

But, notwithstanding these claims had been fully and ably discussed in the passage of the act of May 15, 1828, wherein the half-pay claims are fully recognised, and the act expressly declared, "that each of the surviving officers of the army of the Revolution, in the continental line, *who was entitled to half pay* by the resolve of October 21, 1780, be authorized to receive, out of any money in the Treasury," &c., and takes no notice of or makes any deduction for these commutation certificates. It does not attempt to *describe* such officers as were entitled to *commutation*. Yet Congress,

since the pendency of these claims, have established a court for their investigation, and ordered one of the heirs of these same *joint and several payees* to go before that court, and the United States were *there* by their attorney, and it was there contended that the commutation paid in specie was a compromise of the *half-pay* contract. We have the decision of this court, in *confirmation* of these claims. That is not all; the Thirty-fourth Congress *ratified* that decision. That decision is a public law of the United States, made in pursuance of the *Constitution*, under the authority of the United States, which that *Constitution declares shall be the supreme law* of the land. Congress cannot decline an investigation themselves, and refuse to adopt the legal and judicial exposition of these claims. The case referred to is that of Thomas H. Baird, a son of Absalom Baird, who was a commissioned surgeon in the army of the Revolution, and in that capacity was entitled by law to half pay for life, and other emoluments. Says Chief Justice Gilchrist:

"The proceedings in relation to the claim for commutation do not appear to be very material in relation to the case in the present position. On the 23d March, 1783, a resolution was passed, providing that the officers and others entitled to half pay for life 'shall be entitled to receive at the end of the war their five years' full pay, in lieu of half pay for life, in money—that is, *specie*—or in *securities on interest*, as Congress shall find most convenient.' On the 28th of January, 1794, Dr. Baird applied for the benefit of this provision, but died in the year 1806—having, as is said in the report of the Committee of Claims of the 5th February, 1855, 'become wearied and disheartened with delay.' In the year 1818, his son, Thomas H. Baird, having become of age, petitioned Congress for relief; and on the 3d of March, 1855, the committee reported that 'Dr. Absalom Baird was entitled to the benefit of the act of the 17th of January, 1781, extending the grant of half pay for life to the officers of the hospital department and medical staff.' No action was had upon the resolution until the 22d of June, 1836, when an act was passed granting five years' full pay as commutation, under the resolution of 1783, but *without interest*.

"Now, this claim does not depend for its validity upon any admission contained in the act of 1836. But the Congress which passed that act must have considered that Dr. Baird had a legal claim of some kind; otherwise their conduct, in granting him five years' full pay, was

wholly indefensible. It is, however, relied upon as a final settlement of the claim. Upon any principle known to the law, this position is wholly untenable. It is easy enough to declare, *ex cathedra*, that it was a final settlement. But it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt for a larger amount. A plea of payment of a small sum in satisfaction of a larger is bad, even after verdict. (2 Parsons on Contracts, 130, and notes.) This principle is familiar to every lawyer. A debt may be paid by a fair and well-understood compromise, carried faithfully into effect. *But here* there was no compromise. If it were a case between individuals, no one would dream of applying such a term to it. The United States are either bound by *principles* of law applicable to them, or they are not so bound. If they are not bound, there is an end of the discussion, for then all reasoning is fruitless. If they are bound by the principles of law, it is *impossible* to regard the payment of five years' full pay, without interest, as a satisfaction of this claim. There is no evidence that either party so regarded it; and, unless we set at defiance every principle of law, we cannot hold that one party to a contract, without the consent of the other, can discharge his debt by the payment of a smaller sum than the amount due." * * * "The amount of Dr. Baird's half pay was \$240 per annum, payable at the end of every year. He was entitled to this sum up to the 27th day of October, 1805, the day of his death, and interest on the payments as they became due, according to the express provisions of the resolutions of June 3, 1784."

The Court of Claims therefore reported a bill for the relief of Thomas H. Baird.

"Be it enacted, &c., That the Secretary of the Treasury be, and hereby is, directed, out of any money in the Treasury not otherwise appropriated, to pay to Thomas H. Baird, administrator of the estate of Absalom Baird, a commissioned surgeon in the army of the Revolution, the sum of \$10,074.84, with interest thereon from the 27th day of October, 1805, to the 1st day of June, 1856, deducting therefrom the sum of \$2,400, paid under the act of June 23, 1836."

This bill, as presented by the Court of Claims, was reported, and passed both Houses by large majorities, without amendment. The act was duly approved, and the amount paid at the Treasury.

If the *half pay* was due the son of Dr. Baird, Congress was in duty bound at the very same session to have passed a general act in behalf of all the other joint and several payees of the *same contract*. These heirs waited patiently

for *this decision*; and yet, even to this day, they are still waiting impatiently for some general provision for their relief. The present bill gives less than one-third the amount allowed to Dr. Baird. The twenty-second section of the funding act of August 4, 1790, provides:

"That the proceeds of the sales which shall be made of lands in the Western Territory now belonging or that may hereafter belong to the United States, shall be, and are hereby, appropriated towards sinking or *discharging the debts* for the payment whereof the United States now are, or, by virtue of this act, may be holden, and shall be applied *solely* to that use until the said debts shall be fully satisfied."

Many of these officers gave not only eight years' service to the war of the Revolution, but, in addition to that, they gave over eight years of suffering and deprivation in acquiring and retaining the possession of our public domain.

"The proceeds of the sales of less than five million acres will cover all the provisions of the present bill; the Government can take its own time for the disposition of that amount. Over one hundred and thirty-nine million, up to June, 1857, had been sold for cash; over sixty million acres for military bounty land warrants; sixty-seven million for schools; and over ten million for internal improvements. Over fifty million acres have been granted by Congress for military service of three months and of fourteen days, of the value of more than sixty million dollars." But, strange as it may appear, even after the decision in the case of Baird, *ratified* by the last Congress, embracing many members of the present Congress, who voted and passed that act; yet the bill of the House, which only extends to the principal, *without interest*—in fact, giving only about one-third as much for the same time as was allowed to the son of Dr. Baird—yet this bill has been reported, and on the files of this House, for more than two months; and when, too, it is not pretended that the commutation certificates which were sent to the officers were worth at the time they *were sent* over two and a half dollars to the hundred, are, by this bill, all to be

deducted at their *face*; and, also, all which was paid them under the act of May 15, 1828. When we consider that all the money which has ever been paid to the officers and soldiers of the Revolutionary army, and to their widows and children, does not exceed thirty dollars to each person who served in the army of the Revolution during that long struggle; so long as the United States, contrary to the true spirit of our republican institutions, in violation of the rights of their citizens, shall continue to exclude them from the *Federal courts* of the Government, and compel them to come before Congress for the collection of their just debts, we shall be summoned here to hear, and are bound to investigate their claims. The forum cannot change the legality of their claims; the business relations of this vast country with our Government, and the numerous contracts, express and implied, which exist between the parties, demand the patience, nay, more, *all of the time* which Congress can possibly bestow. They appear before Congress, not in the degrading form of supplicants, but as a portion of the *sovereign* people, with that Constitution in their hands which was ordained to establish justice, and which had its origin at the birth of those world-wide achievements accomplished by the sufferings, the sacrifices, the patriotism, and the blood of those men of matchless valor, that this bill seeks to relieve and to honor.

The report of Mr. Hemphill, of the committee of the House, of January 3, 1826, in which he says "that, by virtue of those resolves, a solemn contract between the Government and officers was made, that ought to be observed on the part of the Government with the most profound sanctity; that when the power of rescission resides exclusively in the bosom of one of the parties, it should be exceedingly cautious that justice should be done to the other; that the claims are founded on a contract which has not been fairly rescinded, and if it has, there cannot possibly be a doubt that the commutation contract

has not been fulfilled," recommended allowing the officers their half pay, deducting their commutation certificates, without any reference to what may have been recovered under the invalid act of 1818.

So the committee of the Senate, in 1838, reported:

"After an assiduous investigation, the committee conclude that no legislation subsequent to the 21st of October, 1780, could, or by a fair construction did, contravene, or in any manner impair, the claim of the officers of the army, or any class of such officers, to the half pay promised them by the act of October 21, 1780. The half pay for life contracted by the act of October, 1780, to be paid to the officers of the army for certain services to be performed by them, *instantæ became a vested right*, of which subsequent legislation nor nothing whatever could divest the officer, save a failure on his part to perform the prescribed service. And it would be a libel on the good sense and justice of the distinguished statesmen and patriots of that period, to imagine even that any legislation subsequent to the 21st of October, 1780, had for its object to impair the deliberate engagement made by that act to allow half pay for life to the officers of the army."

In confirmation of the justice of these claims, it is refreshing to refer to the remarks of the late Secretary Woodbury:

"But they have averred, and it is again repeated, that these officers are seeking a right, and that is a right both on common-law and on chancery principles. But if on only one, whether it be a right on strict common-law principles, or on chancery principles, it is equally a right, and the claim is equally a legal claim. The forum in which it becomes a right does not alter its legality. Hence, if every gentleman would agree with him from Virginia, [Mr. Tyler,] that the statute of limitation should be scorned, and that the pretended payments made to these officers was 'mere wind, mere trash,' I aver, that, in any forum, before any court or jury in Christendom, this right, as between individuals, could now be unanswerably established. Let the issue be formed, and the cause tried to-morrow, and no three or five judges, no twelve 'good men and true,' as jurors, could say that the wages of toil and blood, the solemn promises for sacrifices and sufferings, to secure the liberties of America, had ever been discharged by only 'wind and trash.'" * * *

"Without dwelling a moment on considerations before urged in the argument, in favor of the legality of this claim, let me ask, what has been the reply to the position of the committee, that, on strict legal principles, the promise of half pay for life has ever been fulfilled? Has any one shown that the half pay, in the form of half pay, has ever been paid? No pretence for it. Has

any one shown that the half pay has ever been technically released? No pretence for it." * *

* "How, then, has the promise of October, 1780, been fulfilled? In no way, except by the act of commutation. But it could not be fulfilled by that act, unless all things were transacted in conformity to the provisions of that act." * *

* "Everybody feels and knows, likewise, that the payment, to be in conformity to the act, was to have been money, or at least securities equivalent to money, when, in truth, it was neither; and even under the most favorable view, if the certificates were kept till the funding, fell short of what was due, from one-fourth to one-third. So the certificates, or the payment, should have been made in September, 1783, but were not, in fact, made until some time in 1784-'85, when worth much less. But, break through the forms of measures, and every lawyer, every constitutional statesman, must admit that, on strict legal principles, there should not only have been a conformity to the commutation act, but, in the act itself, to make it binding, there should have been a regard to private vested rights."

In the early organization of the Government, the funding law was the only way in which over three hundred millions of indebtedness could at that time have been otherwise disposed of. But not so now; the sacred pledges and words of Washington are applicable to us as to the old Confederacy:

"The path of our duty is plain before us; honesty will be found, on every experiment, to be the best and only true policy. Let us, then, as a nation, be just; let us fulfil the public contracts which Congress had undoubtedly a right to make, for the purpose of carrying on the war, with the same good faith we suppose ourselves bound to perform private engagements.

"In this state of absolute freedom and perfect security, who will grudge to yield a very little of his property to support the common interest of society, and to insure the protection of Government? Who does not remember the frequent declarations, at the commencement of the war, that we should be completely satisfied, if, at the expense of one-half, we could defend the remainder of our possessions?"

"Where is the man to be found who wishes to remain indebted for the defence of his own person and property to the exertions, the bravery, and the blood of others, without making the generous effort to pay the debt of honor and gratitude? In what part of the continent shall we find a man, or body of men, who would not blush to stand up and propose measures purposely calculated to rob the soldier of his stipend, and the public creditor of his due? And were it possible that such a flagrant instance of injustice could ever happen, would it not excite the general indignation, and tend to bring down upon the authors of such measures the aggravated vengeance of Heaven?"

"As to the idea which I am informed has in

some instances prevailed, that half pay and commutation are to be regarded merely in the odious light of a pension, it ought to be exploded forever.

"That provision should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give to officers of the army for services then to be performed.

"It was the only means to prevent a total dereliction of the service; it was a part of their hire.

"I may be allowed to say, it was the price of their blood and your independence."

It was more than a common debt; it is a debt of *honor*; it can never be considered as a pension or gratuity, nor cancelled until it is fairly discharged.

These are not claims for a pension founded on a mere gratuity; but a legal debt, founded on a solemn contract duly recorded on the books of the Government, wherein there cannot by any *possibility* be any mistake as to the *party*, or the amount paid, and the sum now due.

The resolve of October 21, 1780, constituted a solemn contract with each officer for *grants of land and half pay during life*. The promise of land was blended with and made a part of the same entire consideration with the half-pay portion of the contract. The acknowledgment, presentation, or record, of the one, was the *presentation, promise, and record, of the other*. The suspension of the acts of limitation of one portion would equally affect the other. These were *vested rights*, and the contract could not be varied, rescinded, or impaired, by any subsequent acts of legislation, without the consent of each officer, *individually*.

How did the Government meet their obligation for the *land portion* of the contract? Why, their land was assigned to them in the wilds of the Western territory, then claimed by and in possession of hostile Indian natives, to be conquered, and the possession of it maintained by continued hardships, fighting, sufferings, and dangers, which, during all of the eight years' war for independence, was never before endured. Here the officers and soldiers, or many of them, sacrificed their lives in advancing

the settlement of our great Western territory, adding ten years more of service without pay for the benefit of our country.

The report of the Secretary of the Interior, of 1857, shows that the public surveys have already been extended over more than three-fourths of the whole surface of the public domain. That surface, as therein stated, is fourteen hundred and fifty million acres; of this, there have been surveyed and prepared for market, public lands, &c., four hundred and one million six hundred and four thousand nine hundred and eighty-eight acres, of which quantity fifty-seven million four hundred and forty-two thousand eight hundred and seventy acres have never been offered, and are consequently now liable to public sale; in addition to which, there were upwards of eighty million acres subject to entry at private sale on the 30th of September last.

Of the public domain, there have been disposed of, by private claims, grants, sales, &c., embracing surveyed and unsurveyed land, three hundred and sixty-three million eight hundred and sixty-two thousand four hundred and sixty-four acres; which, deducted from the whole surface, leaves undisposed of an area of one thousand and eighty-six million one hundred and thirty-seven thousand five hundred and thirty-six acres.

It is said the cash sales of the public lands up to June 30, 1857, were for one hundred and thirty-nine million thirty-two thousand eight hundred and fifty-five acres; grants for schools, &c., sixty-seven million seven hundred and thirty-six thousand five hundred and seventy-two; internal improvements, ten million eight hundred and ninety-seven thousand three hundred and thirteen; none of which has been appropriated for the payment of these debts, long due. Much of it has been appropriated for mere objects of gratuity. There have been issued five hundred and forty-seven thousand two hundred and fifty land warrants, which required sixty million seven

hundred and four thousand nine hundred and forty-two acres to satisfy. And since these claims have been presented for the consideration of Congress, strange to say—founded, as they are, upon an express contract, a mortgage on this public domain, embraced in this bill, all the provisions of which cannot call for the proceeds of the sales of over five million acres of this land, which many of them gave a service of eight years to acquire, and ten years' service to maintain—as I before remarked, more than *fifty* million acres have been applied for services of three months to *fourteen days*, amounting to over *sixty-two million dollars*, where there was no contract, *express* or *implied*; and this liberal action of our Government towards those who were engaged in the military service I entirely and cordially approve.

How much of the \$160,000,000 from the cash sales of these lands have been thus appropriated, it would not be an easy task to point out. There are, however, of this public domain, left undisposed of, more than one thousand million acres. It would be a gross libel on the character and justice of the many very distinguished jurists, statesmen, and patriots, who have at different intervals since 1783, down to the present time, pronounced the commutation act of March 22, 1783, to have been founded on the great *exigency* of the Government, having for its object the *delay* of payment of just debts which could not have been met. Certificates of the Government could be *funded*, but the contract for half pay could not; this Government had long been preparing for that scheme of public finance, which was founded in necessity.

Now, this appears to me a plain case; I trust it so appears to others. Certainly, upon a thorough examination of the subject, all must realize that great injustice has been done to those who have achieved our independence as a nation, and that it is the duty of Congress to remove at once the foul blot which now rests upon our national honor.

I am moved to indignation at the ingratitude and the almost criminal neglect of the Government and the Representatives towards those who laid the foundation of all our greatness, our power, and our glory. Think not that the people will be content with delay—with the shuffling off from year to year these long-deferred and just claims. Let them know at once what they have to depend upon, and let it be in consonance with the voice of gratitude and justice. Be true to them, and they will be true to themselves and to you. They see us lavishly appropriating millions for purposes of doubtful expediency—if not, in part, to secure the advancement of party aims, to reward partisan favorites, and perpetuate in the rule of the Government measures of oppression and wrong—while we tardily, if at all, discharge *their* honest demands. The spirit of inquiry is awake. They are now watching with earnest interest all our acts. It will not do to leave this work undone, and say that other things are proper, because they have been done; their voice, which is mighty in making and unmaking Presidents, Cabinets, and Representatives, will be heard throughout the land, demanding the reason: wherefore millions for you, and not one cent for us?

In closing, I beg leave to refer to the result of all the action of Congress, as stated by another.

"It ought not to be forgotten, in connection with the contract for half pay for life, that the Government was driven from one *expedient* to another, which the imperative necessities of the moment required, to induce engagements for the war.

"1. Promising grants of land—September 16, 1776.

"2. Seven years' half pay to those who should serve to the end of the war—May 18, 1778.

"3. Seven years' half pay, in *specie* or *current money*, to the supernumerary officers, to commence January 1, 1781; as also grants of land—October 3, 1780.

"4. Not being able to meet the half pay of a single year, in *specie* or *current money*, they increase the seven years' half pay to half pay during life—October 21, 1780.

"5. As peace had been conquered, and the Government were unable to pay the officers their *arrears* for monthly pay, or to make any provision for their half pay during life, they resorted

to another *expedient*, of promising the officers five years' full pay, in *specie* or *securities*, with interest, payable *annually*—March 22, 1783.

"6. Not being able to *pay* or *secure* this small amount of their claim, resorted to another *desperate expedient*, and caused the Paymaster General to issue and *send* to the officers more of these repudiated certificates, as *specie* and *securities*.

"7. Not being able to pay the interest of a single year, repudiate them.

"Finally, resorted to a funding act, by which the new Government propose an arrangement by which there is to be no distinction between the officer who has been charged twenty-four hundred dollars in commutation, and the person to whom he has sold them at the value fixed by law—for sixty dollars."

And allow me to say, we must not forget, that while the troops of the several *State lines* were employed by the authority of their several *State Governments*, which had been long established, and were responsible for and able to discharge all of their liabilities to their troops, it was quite otherwise with the officers and soldiers of the Continental line. They were in the employ of no acknowledged Government, although they were spending their entire private fortunes, under the authority of those who could neither feed, clothe, nor pay them, to gain independence and liberty for all. The *Continental* army continued its existence and efforts, operating North and South, until the great struggle for liberty had triumphed over all obstacles.

They had no security for their *services* and their *fortunes*, except in the law and honor of the American people. Virginia promised to her officers of her *State* line, who should serve only *three* years, *half pay during life*; and her courts are open to the enforcement of this half-pay contract; and those who did *not* receive their *half pay* to the time of their death, their heirs recovered of Virginia not only the half pay, but also the *interest* on each year's half pay as the same became due. Yet, to the great dishonor of this Government, these officers of Virginia and of the *other States*, who belonged to the *Continental* line, have been deprived to this late day even the pittance of this half pay; and this Government, after having robbed these officers and disinherited their chil-

dren, still asked them to wait until the influences of a long embargo, and also that of a long war with England, had passed off, and then a war with Mexico, and then a war with Utah, until the patriots' grave has shielded them from the influences of such ingratitude and neglect. Their children, however, are still here before the Congress of a powerful and rich nation. They are here with this sacred contract in their hands, guarantied by the sixth article of the Constitution. Can Congress with honor to itself refuse to pay the small amount contemplated in this bill? An omission to support this bill would imply, as I verily believe, aside from any *special request*, a great want of a just appreciation of our duty and relation to our constituents. Whether we shall consider ourselves as sitting as judges, jurors, or legislators, we cannot avoid the conclusion, that the creditors have in the present case made out more than a *prima facie* evidence of the justice and legality of their claim, and I cannot forego the opportunity of recording my views in their behalf.

The following is a synopsis of the bill:

Section 1 provides that the officers of the army who were entitled to half pay for life under the resolutions of Congress of 3d and 21st of October, 1780, 17th January, 1781, 8th of May, 1781, and 8th of March, 1785, shall be entitled to receive the same, although such officer may have received, in lieu thereof, the commutation of full pay for five years, under the resolution of Congress of the 22d of March, 1783.

Sec. 2. That it shall be the duty of the proper accounting officer of the Treasury, when applied to for that purpose by any one who by this act is entitled to receive, or his or her guardian, to ascertain what is due to such officer from the time he became entitled to said half pay until the day of his death.

Sec. 3. That it shall be the duty of the Secretary of the Treasury, when the amount due to any officer has been ascertained as aforesaid, to pay the same, as hereinafter directed, after deducting therefrom the amount received for commutation under any special act of Congress, or under the resolution of March 22, 1783, and all sums received by such officer as *pay* or pension under the act of May 15, 1828.

Sec. 4. That the benefit of the resolution of the 24th of August, 1780, shall be extended to the widows and lineal descendants of all officers embraced therein who died in the service at any period during the war of the Revolution.

Sec. 5. Extends the benefits of the acts of March 3, 1855, and May 14, 1856, to the surviving children of the *soldiers* of the Revolution and persons provided for by those acts—(160 acres of land to the children of each soldier, &c.)

Sec. 6. The Secretary of the Treasury, under the direction and with the approbation of the President of the United States, shall prescribe such rules of evidence as may be necessary to carry into effect the provisions of this act.

Sec. 7. All payments made by authority of this act shall be without interest.

Sec. 8. That in every case the said accounting officer, before he shall order any claim to be paid, shall require satisfactory proof that the person or persons in whose name the same may be presented is or are the *bona fide* owner or owners thereof, and that the claim has not been sold, transferred, or mortgaged, or any part thereof, to any person or persons whomsoever; and all sales, transfers, mortgages, or pledges of any such claims, are hereby declared void, and of no effect whatever.

Sec. 9. That surgeons' mates shall be entitled to the benefit of the resolution of the 17th of January, 1781, and receive the same pay as hospital physicians and surgeons.

Sec. 10. That all persons who apply for and receive the benefit of this act shall receive the same in full satisfaction of all claims under any of the resolutions of Congress hereinbefore recited, and for all losses alleged to have been sustained by depreciation in the value of the certificates received as commutation under the resolution of Congress of the 22d March, 1783.

Sec. 11. That the accounting officer shall be paid to his none less than the child to be deceased officer.

Sec. 12. That the Secretary of the Treasury, instead of paying directly, as provided for in section 11, may in his discretion, and under such rules and regulations as he shall prescribe, pay the claims allowed under this act to the administrator, executor, or curator of such deceased officer, for the sole and exclusive benefit of his child or children, or their descendants, or next of kin, to be distributed among them according to the provisions of section 11 of this act; and the same shall not be considered as part of the assets of said estate, nor applied to the payment of the debts of said estate, in any case whatsoever.

Sec. 13. That all payments under this act shall be made in Treasury notes, bearing an annual interest of six per cent. from the time of their issue, and be redeemable at the pleasure of the Government of the United States.

Sec. 14. This act shall continue and be of force for the term of ten years, and no longer; and all claims not presented, with the evidence, for their adjudication within that time shall be forever barred.

Sec. 15. That the decision of the accounting officer shall be final and conclusive.

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shall be dead, where he children, deceased officer, and in case there be no lineal descendant, then to the next of kin of such deceased officer.

